

## CHAPTER 166. WORKERS' HEALTH AND SAFETY - ACCIDENT PREVENTION SERVICES

### §166.1. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Accident prevention facilities--All personnel, procedures, equipment, materials, documents, buildings and programs necessary to provide accident prevention services to the policyholder.
- (2) Division--The Workers' Health and Safety Division of the Texas Workers' Compensation Commission.
- (3) Field safety representative--An individual providing accident prevention services to workers' compensation policyholders. Qualification as a field safety representative under this chapter does not qualify the individual as an approved professional source, as described in §164.9 of this title (relating to Approval of Professional Sources for Safety Consultations).
- (4) Loss Ratio--Loss ratio is the result of dividing the accumulated claims (including reserves) in a policy year by the premium determined when the policy is written.
- (5) Nature of the policyholders' operations--Type of business or industry with specific reference to potential for accident, injury or disease determined by the standard hazards associated with the most hazardous industrial operations in which the policyholder is engaged.
- (6) On-site visit--A survey or consultation, or training conducted at any premises upon which the policyholder operates a business within the State of Texas.
- (7) Other appropriate services--Services provided in lieu of on-site visits which require direct contact between the insurance company and the policyholder and are applicable to the nature and loss history of each policyholders' operations.
- (8) Premium--The premium calculated by using the insurance company's filed rate with the Texas Department of Insurance (TDI) before any adjustments or discounts are applied. This definition applies to the use of premium whenever referenced in this chapter.

*The provisions of this §166.1 adopted to be effective September 1, 1995, 20 TexReg 5248; amended to be effective December 2, 1997, 22 TexReg 1171.*

### §166.2. Initial Writing and Resumption of Writing of Workers' Compensation Insurance.

#### (a) Initial Writing After Being Licensed to Write Workers' Compensation Insurance:

- (1) An insurance company prior to writing its initial workers' compensation insurance policy in Texas or with Texas exposure shall file with the Division a plan describing the accident prevention services that the company will provide. The plan shall describe how the company will meet all requirements listed in §166.4(c) of this title (relating to Required Accident Prevention Services).
  - (A) The Division shall evaluate the plan's compliance with the requirements listed in §166.4(c) of this title (relating to Required Accident Prevention Services) and resolve any discrepancies with the insurance company. If the insurance company disagrees with the evaluation rendered by the Division, the insurance company may request a hearing as provided by Chapter 148 of this title (relating to Hearings conducted by the State Office of Administrative Hearings).

- (B) Upon completion of the evaluation and successful resolution of any disputes, the division shall issue a letter of approval to the insurance company and the Texas Department of Insurance.
- (C) The insurance company receiving the approval of the plan shall notify the division, in writing, within 30 days of the start date of the first written policy having exposures in Texas.
- (2) The insurance company's accident prevention services will be inspected initially by the division no sooner than six months nor longer than one year after the effective date of the first policy having Texas exposure.
- (3) An insurance company acting exclusively as a workers' compensation excess insurer or reinsurer is not required to submit an accident prevention services plan, but must provide to the division, a legally binding document confirming it will not act as a primary insurer. Should the insurance company subsequently elect to become a primary insurer, it shall submit an accident prevention services plan as described in subsection (a) of this section for evaluation and approval prior to writing insurance as a primary provider.

- (b) Notification to the Commission When Resuming Writing of workers' Compensation Insurance. Any insurance company, which has not written workers' compensation insurance with exposures in Texas for 12 months or more, shall notify the division, in writing, within 60 days of writing its first such policy.

*The provisions of this §166.2 adopted to be effective September 1, 1995, 20 TexReg 5248, amended to be effective December 9, 2001, 26 TexReg 5846.*

**§166.3. Annual Report to the Commission .**

- (a) Each insurance company writing workers' compensation insurance in Texas must make an annual report on its accident prevention services to the commission.
- (b) The report shall be filed no later than March 1 of each year.
- (c) The report shall be made on the form and in the manner prescribed by the commission and contain the information required by the Texas Labor Code, §411.065.
- (d) On December 1 of each year, the division shall issue a list of additional information which it shall require in the annual report under the Texas Labor Code, §411.065. The additional information shall not be required until 12 months have expired.
- (e) The report shall not include the expenses or the costs of underwriting visits to a policyholder's premises unless accident prevention services are provided during the visit. In that case, the proportionate costs of the accident prevention services may be included in the report.

*The provisions of this §166.3 adopted to be effective September 1, 1995, 20 TexReg 5248.*

**§166.4. Required Accident Prevention Services.**

- (a) An insurance company writing workers' compensation insurance in Texas shall maintain or provide accident prevention facilities and services and shall have them inspected by the Division. An insurance company writing only excess or reinsurance is not required to maintain or provide such facilities or services.

- (b) An insurance company shall provide accident prevention services to policyholders at no additional charge.

- (c) An accident prevention service program as required by the Texas Labor Code, §411.061, shall provide, at a minimum:
- (1) an evaluation of the policyholder's need for accident prevention services every 12 months based on the following criteria:
    - (A) hazard, including classification by hazard group, probability of serious or catastrophic type accidents, probability of frequent accidents, and probability of occupational illness or disease;
    - (B) experience, including loss ratio, experience modifiers, frequency rate, and severity rate; and
    - (C) size, including total number of employees, number of locations per policyholder business and number of employees per location.
  - (2) service in accordance with the following requirements:
    - (A) provide services requested by policyholders within 15 days of the date services were first requested, if appropriate services can be provided from the insurance company offices and within 30 days of the date of first request, if the services require an on-site visit. Services may be provided at a later time if circumstances require and the time is agreed upon by the policyholder.
    - (B) an on-site visit, or provision of other appropriate services, on a periodic basis and at least every 12 months to each policyholder with:
      - (i) a premium of less than \$25,000 and a loss ratio greater than 100%; or
      - (ii) a premium of \$25,000 or more;
    - (C) a mandatory on-site visit on a periodic basis and at least every 12 months to each policyholder with:
      - (i) a premium of \$25,000 or more and a loss ratio greater than 100%; or
      - (ii) a premium between \$5,000 and \$24,999, inclusive, and a loss ratio greater than 250%;
    - (D) a visit to the insured within three working days of notification and/or knowledge of a fatality. If the fatality occurred outside of Texas or was the result of an accident on a common carrier, no visit is required; and
    - (E) written solicitation of comments from each policyholder, at least every 12 months, to determine the need for safety information or assistance. Such letter shall specifically explain that accident prevention services, including surveys, recommendations, training programs, consultations, analysis of accident causes, industrial hygiene and industrial health services are available at no additional charge and shall be provided upon request directly to the policyholder. This requirement is in addition to the requirements in paragraph (8) of this subsection. For policies issued on or after September 1, 2005, the letter shall also include the insurance carrier's notification to the employer of the availability of return-to-work coordination services.

- (3) a sufficient number of qualified personnel performing the duties of field safety representative to provide service at the frequency required in paragraph (2) of this subsection;
- (4) written procedures for:
  - (A) determining the appropriate accident prevention services to be provided to a policyholder;
  - (B) the time frame and manner in which the services identified under paragraph (2) of this subsection will be delivered to a policyholder;
  - (C) providing safety training to policyholders and providing promotional and course materials that are available for each safety training program; and
  - (D) providing written reports to the insurance company and the policyholders which identify hazardous conditions and work practices on the policyholder's premises;
- (5) written records, reports, and evidence of all accident prevention services provided to each policyholder;
- (6) written notification at least every 12 months to each policyholder of actual claims experience;
- (7) written documentation of loss analysis at least every 12 months to each policyholder with:
  - (A) a premium of \$25,000 or more; or
  - (B) a premium between \$5,000 and \$24,999, inclusive, and a loss ratio of greater than 250%;
- (8) evidence that each workers' compensation insurance policy delivered or issued for delivery in Texas contains the following notice on the declarations page or on the front of the policy in at least 10-point bold type:
  - (A) for policies issued before September 1, 2005, "(Name of company) is required by law to provide its policyholders with certain accident prevention services as required by the Texas Labor Code, §411.066, at no additional charge. If you would like more information call (insurance company's loss control division or provider's telephone number). If you have any questions about this requirement, call the Division of Workers' Health and Safety, Texas Workers' Compensation Commission at 1-800-452-9595." or
  - (B) for policies issued on or after September 1, 2005, "(Name of company) is required by law to provide its policyholders with certain accident prevention services as required by the Texas Labor Code, §411.066, at no additional charge and return-to-work coordination services as required by Texas Labor Code §413.021. If you would like more information, call (insurance company's) loss control division at (telephone number) for accident prevention services or (phone number)for return-to-work coordination services. If you have any questions about this requirement, call the Division of Workers' Health and Safety, Texas Workers' Compensation Commission at 1-800-687-7080."; and

(9) annual reports as required by §166.3 of this title (relating to Annual Report to the Commission).

*The provisions of this §166.4 adopted to be effective September 1, 1995, 20 TexReg 5248; amended to be effective July 26, 1998, 23 TexReg 7367; amended to be effective June 9, 2005 30 TexReg 3253.*

**§166.5. Required Periodic Inspections of Accident Prevention Services and Site of Inspection.**

(a) Required periodic inspections.

- (1) The division shall inspect the accident prevention services of each insurance company at least every two years and may inspect more frequently even though the insurance company has a valid certificate of inspection.
- (2) Affiliated companies of an insurer may be inspected together if the same facilities, programs, and personnel are used by each of the companies.
- (3) At least 60 days prior to an inspection, the division shall mail the inspection notification to the insurance company. The notice shall specify the date on which the inspection will occur.

(b) Site of inspection.

- (1) The inspection of the insurance company's accident prevention services shall take place at:
  - (A) the insurance company office in Texas, as designated and agreed to by the division and the insurance company; or
  - (B) the commission's Austin headquarters or other agreed location if the insurance company has no office in Texas.
- (2) An insurance company may make a written request for its accident prevention services to be inspected at a location outside the state of Texas on a reimbursement basis. If the request is approved by the division, the insurance company shall reimburse the commission pursuant to the Act and the commission rules and policies for the costs of accommodating the request to perform the inspection at the desired location. Reimbursement costs shall include, but not be limited to, transportation, lodging, meals and personnel travel time while en route. No fees shall be charged to the insurance company for the actual inspection of the company's accident prevention services.

*The provisions of this §166.5 adopted to be effective September 1, 1995, 20 TexReg 5248.*

**§166.6. Exchange of Information for the Inspection.**

(a) Pre-Inspection Exchange of Information.

- (1) At least 45 days prior to the date set for inspection, the insurance company shall provide the Division with:
  - (A) a list of policyholder accounts by policyholder name, policy number, effective date or expiration date of policy, written premium before any adjustments, including deductibles or discounts, and Texas locations. The list shall be taken from the insurance company's most current records, separated by affiliated companies, arranged in descending order by premium, and include all policies which had been in effect or have been written since the policyholder list was prepared for the last inspection of the insurance company's accident prevention services by the Division; and

- (B) a list of the name, location, status (whether employee or contractor), and proof of qualifications as set forth in the Texas Labor Code §411.062 and §166.8 of this title (relating to Qualification of Field Safety Representatives) of each person acting as a field safety representative for the insurance company.
- (2) Within 10 days of receipt of the list, the Division shall select the specific accounts to be evaluated and notify the insurance company of those accounts. The list of policyholder accounts will be kept confidential to the extent permitted by law. The Division shall return the list to the insurance company at the time of the inspection.
- (3) At least 35 days prior to the date set for inspection, the insurance company shall provide the Division with the completed Accident Prevention Services Questionnaire provided by the Commission. The questionnaire shall have been completed and signed by an individual authorized by the insurance company to be responsible and whose signature has been notarized on the questionnaire form.
- (4) For each account selected by the Division, the insurance company shall prepare an accident prevention services worksheet on the form prescribed by the Commission.
- (5) At least five days prior to the date of the inspection, the insurance company shall file the completed worksheets with the Division.

(b) Information to be Made Available at the Inspection.

- (1) The insurance company shall make available the following information, as of the date of the last inspection or start of writing workers' compensation coverage, whichever is later, at the time and site of the inspection:
  - (A) the loss control files corresponding to the requested worksheets;
  - (B) evidence that the policyholder has been provided the notice required by this chapter and any other material used to notify policyholders of the accident prevention services;
  - (C) a copy of all accident prevention services procedures;
  - (D) a copy of loss runs for each selected account that will include:
    - (i) number of injuries;
    - (ii) accident or illness types;
    - (iii) body parts involved;
    - (iv) injury causes; and
    - (v) fatalities;
  - (E) if continuing education or training are required by the Commission, a record of any training received by the field safety representatives since the previous inspection;
  - (F) a sample of policyholder training materials, audio-visual aids, and training programs; and
  - (G) other information requested by the inspector which is necessary to complete the inspection.
- (2) The insurance company shall also provide the information required by subsection

(a) of this section which is not already in the possession of the Division.

- (3) Upon request from the Division inspector, the insurance company shall provide copies of documents requested, accompanied by a notarized Business Record Affidavit. Information which may be requested shall be limited to records of surveys, consultations, recommendations, training provided, training materials available, loss runs and loss analyses, industrial health and hygiene services, accident prevention procedures and field safety representative qualifications. In addition, upon request from the Division inspector, the insurance company shall provide return-to-work coordination services information. The Business Record Affidavit form shall be provided by the inspector and shall be completed and signed by an individual authorized by the insurance company.

*The provisions of this §166.6 adopted to be effective September 1, 1995, 20 TexReg 524; amended to be effective June 9, 2005 30 TexReg 3253.*

### **§166.7. Inspection of Accident Prevention Services: Conducting and Reporting.**

(a) Conducting the Inspection.

(1) The division inspector and the insurance company's representative shall review:

(A) the insurance company's accident prevention services since the last inspection;

(B) any changes that have been made in response to recommendations made during previous inspections;

(C) any complaints from policyholders which have been received by the division since the insurance company's last inspection; and

(D) if appropriate, services rendered under the Hazardous Employer Program.

(2) Based on the information obtained under subsection (a)(1) of this section and a review of the selected files and other accident prevention related information, the division inspector shall make the insurance company representative aware of any areas of non-compliance noted. The insurance company will be afforded an opportunity to respond to the findings. The inspector shall evaluate the adequacy of the accident prevention services of the insurance company and, if no other relevant information is available or anticipated, advise the insurance company's representative of the resulting conclusions.

(3) An insurance company determined by inspectors, in the course of the inspection, to be out of compliance with the Act shall receive an extended inspection, if necessary, to provide inspectors with sufficient information to determine if an administrative violation of the Act has occurred.

(4) In addition, the division inspector will make scheduled or unscheduled inspections of policyholder job sites, conducted and completed during normal work hours, to obtain additional information about the insurance company's accident prevention services.

(b) Written Report of Inspection.

(1) The division inspector shall prepare a written report of the inspection and shall provide a copy to the insurance company's executive management and to the Texas Department of Insurance, Loss Control Regulation Division. The division shall, whenever possible, prepare and provide this report within 30 days of the completion of the inspection.

(2) The report shall contain the division inspector's rating for services set out in the Texas Labor Code, §411.061 and §166.4 of this title (relating to Required Accident Prevention Services), to include

specific findings and required corrective actions. The rating will state that the mandatory service either meets or does not meet standards.

- (3) An insurance company with deficiencies shall comply with the required actions contained in the report and submit reports to the division until certified in writing, by the division, that they are in compliance.
  - (A) The reports shall detail the corrective actions being taken to address each specific finding.
  - (B) The date on which the reports are due shall be specified in the report of the inspection prepared in accordance with this section.
- (4) Any appeal of the report by the insurance company shall be made in accordance with the applicable commission rules and the Texas Labor Code, §415.034.
- (5) The division shall issue a certificate of inspection to each insurance company after completion of an inspection in which the mandatory services meet the standards.

*The provisions of this §166.7 adopted to be effective September 1, 1995, 20 TexReg 5248; amended to be effective March 14, 2001, 26 TexReg 2034.*

#### **§166.8. Qualification of Field Safety Representatives.**

- (a) A field safety representative providing accident prevention services on behalf of an insurance company writing workers' compensation insurance in Texas shall meet one of the following qualification requirements:
  - (1) service as a field safety representative immediately before September 1, 1995, provided the person:
    - (A) continues to meet the qualification requirements for a field safety representative that were in effect before September 1, 1995; and
    - (B) complies with applicable continuing education requirements adopted by the Texas Workers' Compensation Commission;
  - (2) current certification by the Board of Certified Safety Professionals (BCSP) as a Certified Safety Professional (CSP);
  - (3) current certification by the American Board of Industrial Hygiene (ABIH) as a Certified Industrial Hygienist (CIH);
  - (4) a TWCC Approved Professional Source on the active professional source list;
  - (5) a total of ten years active practice in the occupational health and safety profession;
  - (6) six years active practice in the occupational health and safety profession within the past ten years;
  - (7) two years active practice in the occupational health and safety profession or satisfactory completion of an insurance company intern program, as specified in subsection (e) of this section, and:
    - (A) a bachelor's degree, or higher, in science or engineering from an accredited college or university, with a transcript provided by the college or university on file with the division;
    - (B) completion of an occupational health and safety education program which meets the requirements of §166.9 of this title (relating to Approval of Occupational Health and Safety Education Programs), with a transcript provided by the educational institution on file with the division;

- (C) current certification, by a professional safety, health or hygiene organization, approved by the division; or
  - (D) current registration as a Professional Engineer;
- (8) a bachelor's degree in occupational health and safety, and either one year active practice in the occupational health and safety profession or satisfactory completion of a one year insurance company intern program, as specified in subsection (e) of this section.
- (b) Active practice in the occupational health and safety profession is defined as personal involvement in the development and implementation of health and safety programs where the involvement requires at least 70% of the individual's working time. Participation in an intern program may count as active practice towards the two year requirement.
  - (c) Proof of active practice in the occupational health and safety profession shall be retained by the insurance company on a form prescribed by the commission, except when the insurance company has verified with the commission that the field safety representative's qualifications have already been evaluated by the commission and were found to meet established requirements. Proof of current certification being used as a means of qualification shall be retained by the insurance company. Such proof shall be presented to inspectors at the time of inspection.
  - (d) The division may waive the requirement of proof of qualification during an inspection if the field safety representative has previously met the requirements of subsection (a)(5), (6), (7)(A) and (B) and (8) of this section.
  - (e) An insurance company intern program:
    - (1) shall be 24 months in length or in the case of an intern with a degree in occupational health and safety, 12 months in length;
    - (2) shall include an initial phase of six months of supervision in which a qualified field safety representative must accompany the intern on all field visits;
    - (3) shall require satisfactory completion of the initial six-month phase and the placement of a recommendation in the intern's training file by a qualified field safety representative as to whether the intern should continue in the program;
    - (4) shall include an additional 18-month phase or in the case of an intern with a degree in occupational health and safety, an additional six-month phase, during which the intern shall be permitted to service policyholders with manual premiums less than \$100,000; with loss ratios in the previous policy year of less than 70%; and who are not active in the Hazardous Employer Program, with the following requirements:
      - (A) shall require the intern to be accompanied on field visits at least once quarterly by a qualified field safety representative; and
      - (B) shall require all workers' compensation documentation produced by the intern to be reviewed, approved and signed by a qualified field safety representative.
    - (5) shall include in the intern training records the name of each intern entered into the program, the qualifications of each intern and the date the intern completes the program.

- (f) Qualification as a field safety representative under this section does not qualify the individual as a professional source approved by the division of workers' health and safety to provide consultations for hazardous employers.
- (g) The division shall evaluate the qualifications of any individual acting as a field safety representative for an insurance company writing workers' compensation insurance in Texas when requested to do so by the insurance company.

*The provisions of this §166.8 adopted to be effective November 6, 1995, 20 TexReg 8613; amended to be effective March 14, 2001, 26 TexReg 2034.*

**§166.9. Approval of Occupational Health and Safety Education Programs.**

- (a) Each occupational health and safety education program seeking approval from the commission shall apply to the division on the form and in the manner prescribed by the commission (TWCC 108).
- (b) At a minimum, the program shall be conducted by an accredited educational institution and shall include a comprehensive examination developed or administered by an examination service accepted by the division, and at least 800 hours of classroom, laboratory instruction, and supervised field training in the following areas:
  - (1) safety management practices and techniques;
  - (2) accident analysis;
  - (3) industrial hygiene sampling techniques;
  - (4) industrial health and hygiene;
  - (5) ergonomics;
  - (6) regulations, standards, and codes relating to safety and health; and
  - (7) safety inspection and consultation.
- (c) Prior to graduating from the training program, each student must pass the examination approved by the division.
- (d) The division shall approve each education program which contains the required information and meets the minimum qualifications and shall issue approval to the educational institution. The approval shall be valid for three years from the date of issuance.
- (e) Each educational institution with an approved program shall submit an annual report on or before the anniversary date of the approval. The report shall state:
  - (1) if the program is active or was active within the past year; and
  - (2) any changes in the program, to include changes of instructors, since the last report or inspection.
- (f) The division shall evaluate and reapprove each education program at least every three years and may conduct monitoring of the approved program at any time.

*The provisions of this §166.9 adopted to be effective September 1, 1995, 20 TexReg 5248.*